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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/746,183	12/21/2000	Fredrick K. P. Klassen	END920000102US1	2908

7590 05/03/2005

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EXAMINER

KADING, JOSHUA A

ART UNIT PAPER NUMBER

2661

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/746,183

Applicant(s)

KLASSEN ET AL.

Examiner

Joshua Kading

Art Unit

2661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 and 7-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-5, 7-10, 12, 13 and 16-25 is/are allowed.
- 6) ☒ Claim(s) 11, 14 and 15 is/are rejected.
- 7) ☒ Claim(s) 11, 14, and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Objections***

1. Claims 11, 14, and 15 are objected to because of the following informalities:

Claim 11, line 12; claim 14, line 18; and claim 15, line 12 state, "and of  
5 component". This should be changed to --and of a component--. Appropriate correction  
is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that  
10 form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public  
use or on sale in this country, more than one year prior to the date of application for patent in the United  
States.

15 3. Claims 11, 14, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated  
by U.S. Patent 5,477,531, McKee et al. (McKee).

Regarding claims 11, 14, and 15, McKee discloses the method of claim 11 and  
the computer programs of claims 14 and 15. The computer programs having  
20 instructions (*figure 2 as described in col. 3, lines 6-7 shows a program for implementing  
the given network testing of McKee*) to perform the method of "transmitting probative  
packets into a network (*figure 2 shows the test packet sequence 50 to be transmitted*),  
said packets including echoed and non-echoed packets (*col. 6, lines 28-30 where  
round-trip is bidirectional, i.e. echoed as defined by applicant in the specification, page*  
25 *17, lines 10-11; col. 8, lines 57-53 whereby creating a full buffer, the packets can only*

travel unidirectionally, i.e. non-echoed as defined by applicant in the specification, page 17, lines 7-9), of like and differing lengths (col. 7, lines 1-3), of like and differing network priority (col. 6, lines 36-40), individually and in bursts (figures 3A and 3B show individually; figure 6 shows packet bursts); measuring the transit times of said probative  
5 packets (col. 7, lines 30-35); and responsive to said transit times, determining capacity and utilization of said network and of a component end processor and network parts for deriving a streaming speed of said network (col. 7, lines 48-60 where the overall bandwidth, i.e. the speed as determined through the testing of the network as described in col. 3, lines 42-44, includes parameters of round-trip delay (which includes the  
10 end processor processing) and network hops delay (network parts)).”

#### **Allowable Subject Matter**

Claims 1-5, 7-10, 12, 13, and 16-25 are allowable as indicated in the previous Office Action mailed 17 September 2004.

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#### **Response to Arguments**

4. Applicant's arguments, see REMARKS, pages 15-16, "Claim Objections", filed 17 December 2004, with respect to the objections of claims 1, 5, 14, 15, 16, 20, 23, and 25 have been fully considered and are persuasive. The objections of claims 1, 5, 14, 15,  
20 16, 20, 23, and 25 have been withdrawn.

5. Applicant's arguments with respect to claims 11, 14, and 15 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

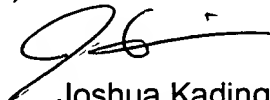
5 6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE  
10 MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of  
15 the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua Kading whose telephone number is (571) 272-  
20 3070. The examiner can normally be reached on M-F: 8:30AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau Nguyen can be reached on (571) 272-3126. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the  
5 Patent Application Information Retrieval (PAIR) system. Status information for  
published applications may be obtained from either Private PAIR or Public PAIR.  
Status information for unpublished applications is available through Private PAIR only.  
For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should  
you have questions on access to the Private PAIR system, contact the Electronic  
10 Business Center (EBC) at 866-217-9197 (toll-free).

  
Joshua Kading  
Examiner  
Art Unit 2661

April 28, 2005

  
CHAU NGUYEN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2661